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August 22, 2013

The Honorable James L. Robart
United States District Court
Western District of Washington
700 Stewart Street, Suite 14128
Seattle, WA 98101-9906

Re: Microsoft Corp. v. Motorola Mobility, Inc.
Case No. C10-1823-JLR

Dear Judge Robart:

We are in receipt of this Court's email of August 21, 2013, including this Court's decision on Preliminary Instruction #2. While we maintain our objections to Preliminary Instruction #2 for all the reasons set forth in our July 26, 2013 Joint Statement of Disputed Jury Instructions (Dkt. 791) and Motion in Limine #1 (Dkt. 797, at 1-11), at this time we request only the addition of the following sentence at page 11, line 8:

Under Motorola's contracts with the IEEE and ITU, Motorola did not need to make an initial offer on RAND terms.

This addition is derived directly from this Court's prior ruling that "under Motorola's agreements with the IEEE and ITU, Motorola need not make initial offers on RAND terms." *See* Dkt. 335 at 24. Because the Court will instruct the jury on the RAND rates and ranges in the preliminary instructions, it is important and helpful for the jury to know that the initial offer need not be on RAND terms. Without inclusion of this finding in the preliminary instructions, there is a risk that the jury will be confused and believe during the course of the trial that if the offer rate was different than the RAND terms, Motorola was in breach. Motorola therefore respectfully requests the addition of this proposed sentence to Preliminary Instruction #2.

Respectfully,

SUMMIT LAW GROUP PLLC

/s/ Ralph H. Palumbo

Ralph H. Palumbo

cc: All Counsel of Record